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clearly expressed as subsequent in form, whereas the right of the heirs is contingent upon a condition precedent. *Cowman* v. *Rogers*, 73 Md. 403. This is the natural and almost necessary construction of the contract, although, in a similar case, the Massachusetts court took a different view. *Fuller* v. *Linzee*, 135 Mass. 468. It will be seen that the heirs cannot state a claim without alleging the death of the beneficiary in the lifetime of the assured, or, at least, her death at the same time. This claim they cannot substantiate. The wife's representatives, however, state a valid *prima facie* claim by alleging merely the death of the assured. Consequently the decision of the court favoring the heirs' claim seems unjustifiable.

THE RIGHTS OF TRUSTEES TO INDEMNITY. — Where one person at the request of another undertakes a trust for that other's benefit, he has generally been held entitled to be indemnified by the *cestui que trust* personally, where the trust fund was insufficient, for any expenses connected with the execution of the trust. *Hemming* v. *Maddock*, L. R. 7 Ch. 395; *Grissell* v. *Brestowe*, L. R. 4 C. P. 36. The question whether the mere trust relation imposes the same liability on the beneficial owner independently of contract was for the first time presented in an important case lately decided by the Privy Council. *Hardoon* v. *Belilios*, 83 L. T. Rep. 573. A firm acquired stock in a bank, and had it registered in the name of the plaintiff, one of its clerks, he executing and delivering to the firm a blank transfer. This transfer came into the hands of one Coxon, who pledged it to the defendants, and on the settlement of accounts between Coxon and the defendants the latter became the beneficial owners of the stock. Later the plaintiff applied to the defendants to accept a transfer of the stock on the bank's books, but this the defendants refused. On the bank subsequently going into liquidation the plaintiff was placed on the list of contributories, and sued for calls so paid by him. The court held the defendant liable on the express ground that a person *sui juris* beneficially entitled to shares which he cannot disclaim, is bound, in a court of equity, to indemnify the trustee against calls.

On the facts of the principal case the result reached may be desirable, but it is difficult to feel the certainty of the court as to its obvious correctness. Lord Lindley professed to find the rule imposing liability under the circumstances of the principal case settled by a long line of decisions extending from *Balsh* v. *Hyham*, 2 P. Wms. 453, to *Hughes-Hallet* v. *Indian Gold Mines Co.*, 22 Ch. D. 561. In all these cases, however, the parties either stood in the relation of vendor and purchaser, or there was a contract between them, or a request by the defendant for the plaintiff to become trustee. These facts Lord Lindley stated were immaterial, but it was on these facts that the counsel for the plaintiff in all the cases relied, and the strongest expressions in favor of the principal case consist of loose statements broader than the matter there under consideration required. Moreover, the great authority of Lord Blackburn points squarely the other way. *Fraser* v. *Murdoch*, 6 App. Cas. 855. Hitherto, as far as actual decisions went, the trust relation could safely be regarded as unilateral, the trustee alone being under any obligation: all his rights against the *cestui que trust* arising separately — out of *quasi*-contract for a benefit conferred, or because of a contract of in-

demnity readily implied from a request to act as trustee. It is difficult to contend that a person merely by becoming a beneficial owner thereby subjects himself to certain duties to the legal owner. Being a holder of the beneficial interest does not always necessitate incurring the liabilities of legal ownership, for one can take an under lease for one day less than the original term of a lease, and not be liable on its covenants, though practically the entire beneficial interest has passed. Further there is no strong reason of convenience against the view that the trust relation is unilateral, because a person becoming trustee must be taken to know that liability is often consequential on legal ownership, and accordingly he should safeguard himself by some provision for indemnity. It would scarcely be contended that the legal owner in this case could by a bill in equity have forced the legal title on the defendant. The latter could well say that he did not buy that, and does not want to have anything to do with it. Yet that is practically the result of the principal case. By it an equitable owner is placed effectively in the same situation as a legal owner, for on its principle the liquidator could enforce any legal liability of the trustee by an equitable execution against the *cestui que trust*. It would be interesting to see whether the court in an analogous case in which the *trust res* consisted of land would similarly throw the burden on the beneficial owner. To do so would be in violation of the principles governing trusts of land, and would compel the court to disregard a decision by Lord Cottenham holding that an equitable mortgagee of a lease cannot be forced to take an assignment of the lease, or be held liable on its covenants. *Moore* v. *Greg*, 2 Phillips, 717. Yet it would be difficult for the court to find a satisfactory distinction. The case, in short, seems but another illustration of the tendency at times manifested by even the most conservative tribunals *judicium dare* and not *judicium dicere*.

RECENT CASES.

ADMIRALTY — MUNICIPAL CORPORATIONS — TORTS OF PUBLIC AGENTS. — A city fire-boat on the way to a fire, through the negligence of those in charge, ran into and injured another vessel. *Held*, that the common law rule, holding that the city is not liable for the negligence of its servants while engaged in a public service, is inapplicable in admiralty. *Workman* v. *New York*, 21 Sup. Ct. Rep. 212. See NOTES, 14 HARV. LAW REV. 450.

BANKRUPTCY — GENERAL ASSIGNMENT — RIGHTS OF CREDITORS. — A debtor voluntarily conveyed property to a trustee for the benefit of creditors, securing by the deed a fraudulent debt to his wife. The plaintiff brings a bill to have the deed set aside as to voluntary debts. *Held*, that the plaintiff may attack a debt secured by the deed at the same time that he asserts his own rights as a beneficiary. *Runkle's Admin.* v. *Runkle*, 37 S. E. Rep. 279 (Va.).

In general, a grantee under a deed cannot accept its benefits, and reject any burdens which it imposes. *Vickerie* v. *Buswell*, 13 Me. 289. Accordingly it has been held that a creditor, affirming part of a voluntary assignment by claiming under it, cannot disaffirm the rest. *Pratt* v. *Adams*, 7 Paige, 615, 641; *Swanson* v. *Tarkington*, 7 Heisk. 612. The general rule, however, seems to be improperly applied to these cases, for the attacking creditor does accept the deed *in toto* as far as it is legal, and is not rejecting any legal burden. He is merely endeavoring to strike out improper provisions from the deed. In this view of the matter, and considering the better protection afforded to creditors thereby, the result reached in the principal case seems